



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 10, 1993

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 93-79

Re: Concerning the establishment of a
"wildlife hotline" in Harris County and
related question (ID# 16575)

Dear Mr. Driscoll:

You have requested an opinion concerning the establishment of a "wildlife hotline" in Harris County. You advise us that a nonprofit corporation would like to use space at a county park located in Precinct 4 of Harris County to operate the hotline. Volunteers would provide free information to the public regarding native wild animals in urban and suburban environments. The hotline would also serve as a referral service for the care and handling of sick, injured and orphaned wildlife. You further state that the precinct 4 veterinarian has assured you that he has been authorized by the Texas Department of Wildlife to take possession of protected wildlife for rehabilitation purposes.¹ The veterinarian and the veterinary technician at the park currently treat and care for injured wildlife brought to the park by members of the public. The volunteers answering the hotline would also assist the staff veterinarian and the veterinary technician in their responsibilities. In return, the county would provide an office space containing a telephone, desk, chair and an answering machine for use by the non-profit corporation. The expenses for the telephone would be paid by the corporation. Within this context, you specifically ask the following:

1. Is Harris County authorized to engage in the care, treatment and protection of wildlife at a county park which is unrelated to the operation of a zoo[; and]
2. If the answer is yes, is Harris County authorized to enter into an agreement with a nonprofit corporation for the purposes of allowing said corporation to operate a "wildlife hotline" in a county park[.]

¹The Parks and Wildlife Code § 43.022 specifically states that "a qualified person" may be authorized to take protected wildlife for certain authorized purposes, including rehabilitation.

In response to your first question, a county commissioners court "shall exercise such powers and jurisdiction over all county business as is conferred by the constitution of the state. . ."; it has only those powers conferred either expressly or by necessary implication by the constitution and statutes of this state. *See Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948); Tex. Const. art. V, § 18. The court may exercise its authority together with such other implied powers reasonably necessary to carry out its express duties. *Schope v. State*, 647 S.W.2d 675 (Tex. App.--Houston [14th Dist] 1982, pet. ref'd); Attorney General Opinion JM-449 (1986) at 1.

The authority of the commissioners court to operate and maintain parks on behalf of the county is derived from section 331.001(a) of the Local Government Code which provides:

A . . . county may improve land for park purposes and may operate and maintain parks.

Furthermore,

Parks acquired under this chapter are under the control and management of the municipality or county acquiring the park.

Local Gov't Code § 331.005(a).

The term "park" is generally defined as an open or enclosed tract of land set apart for recreation and enjoyment by the public. *Sandborn v. Amarillo*, 93 S.W. 473, 1906 (writ ref'd); *see also Persons v. City of Fort Worth*, 790 S.W.2d 865, 873 (Tex. App.--Fort Worth 1990); 57 TEX. JUR. 3d *Parks, Squares, and Playgrounds* § 1 (1987). In *Persons*, a city resident brought an action to enjoin the city from continuing with planned expansion of the city zoo and development of the city zoo and park. The court held that because the proposed changes in the city's use of park land would not alter the general use of the land for park purposes, the degree of change in park use was within the city's authority to determine. *Persons*, 790 S.W.2d at 873.

Similarly, the court's analysis in *Persons* is applicable to the instant situation. The proposed changes, and more specifically the installation of a "wildlife hotline" would not alter the general use of the land for park purposes. Further, because the veterinarian's office is located in the park, the hotline along with the volunteers could assist the veterinarian in the performance of his or her duties. Hence, we conclude that the county is authorized to engage in the care of wildlife and to establish a "wildlife hotline" in the park.

We now turn to the question of whether the proposed arrangement would violate certain provisions of the Texas Constitution. Article III, section 52(a) provides:

Except as otherwise provided . . . the Legislature shall have no power to authorize any county . . . to grant public money or thing of value in aid of or to any individual, association or corporation

Furthermore, county officers are not authorized and cannot be authorized to grant county property to a corporation unless some provision of the state constitution should provide them with the authority to do so. *See* Attorney General Opinion JM-533 (1986). However, we note that a grant such as the one at issue would be permissible if in pursuit of an authorized county purpose where conditions would be attached to ensure accomplishment of that purpose. Attorney General Opinion JM-274 (1984). Having concluded that the county is authorized to engage in the care of wildlife and to establish a "wildlife hotline" in the park, we also conclude that the county may contract with a private entity to perform services which the county is authorized to perform itself. *See* Attorney General Opinion H-1123 (1978) (operation of a rape crisis center). The agreement at issue has not been submitted for our consideration, and thus we do not express an opinion on the validity of the details of any particular contract which might be proposed.

Furthermore, we recognize that the Parks and Wildlife Department ("the department") has authority over state parks. In the development of outdoor recreation programs, the department must coordinate its activities with the interests of all agencies and political subdivisions of the state as part of a state plan. Parks and Wild. Code § 13.307(a). The department has promulgated the Texas Local Parks, Recreation and Open Space Fund Project Agreement. You state that the park at issue is subject to this agreement. You specifically direct our attention to Part II, subparagraph A of the agreement which provides:

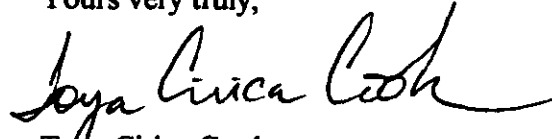
The participant agrees that the property described in the project agreement and in the dated project boundary map made part of that Agreement is being acquired or developed with Fund assistance, and that it shall not be converted to other than public recreation use but shall be maintained in public recreation in perpetuity or for the term of the lease in the case of leased property.

Because we have concluded that the commissioner's court is authorized to approve the proposed activity, we do not believe that such action would violate the terms of the agreement. Similarly, because we have reached such a conclusion we need not further address your constitutional concerns on this issue.

S U M M A R Y

A county is authorized to engage in the care, treatment and protection of wildlife at a county park which is unrelated to the operation of a zoo. Furthermore, a county may contract with a private entity to operate a "wildlife hotline" in a county park.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toya Cirica Cook". The signature is fluid and cursive, with the first name "Toya" being the most prominent.

Toya Cirica Cook
Assistant Attorney General
Opinion Committee